

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DEREK KESSEL, MARIE KESSEL and  
ARNOLD KESSEL,

Plaintiffs,

v.

Case Number: 05-10267  
Honorable David M. Lawson

PORT HOPE SCHOOL DISTRICT, LAWRENCE  
ISELER, SAM INGRAM, CHRIS JAHN,  
RAYMOND SCHULTE, KAREN GUST, CASEY  
JAHN, MIKE GUST, DAVID KOGLIN, BYRON  
S. BELT, MATT WOODKE, MICHAEL H.  
BOWMAN, DON PITTS, STAN SHIPP, JUDY  
LUBESKI, MATT KOGLIN, JOEY WOODKE,  
JOE GUST, SHAWN GUST, DUSTIN WEISS,  
JOSH FOSDICK, JUSTIN ABRAHAM, and  
JEFF ALES,

Defendants.

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**ORDER GRANTING IN PART MOTION TO STAY PROCEEDINGS AND STAYING  
PROCEEDINGS AS TO DEFENDANT JUSTIN ABRAHAM ONLY**

This matter is before the Court on a motion to stay proceedings brought by defendant Justin Abraham pursuant to the Service Members Civil Relief Act, 50 U.S.C. app. § 501 *et seq.* He seeks to stay the proceedings against him until 90 days after he completes his military service in October 2013. The Court finds that defendant Abraham is entitled to a stay for a shorter duration than the period sought. The motion will therefore be granted in part only.

Defendant Abraham is currently serving in Iraq as a member of the United States Marine Corp. He enlisted with the Marines in October 24, 2005 for a four-year period of active service followed by a four-year period of reserve duty. Attached to Abraham's motion is a letter from his superior officer, Major M. B. Murphy, stating that Abraham will be in Iraq until at least September

2007 and that military operations prevent him from taking leave in the meantime.

The Service Members Civil Relief Act entitles a member of the military to a stay of proceedings instituted against him when certain conditions are met. 50 U.S.C. app. § 522(b)(1)(2). The Act instructs courts to stay the action “for a period of not less than 90 days” when the applicant: (1) shows that “current military duty requirements materially affect [his] ability to appear,” 50 U.S.C. app. § 522(b)(1)(2)(a); and (2) provides a statement from his commanding officer confirming as much and further stating that the applicant is not entitled to military leave, 50 U.S.C. app. § 522(b)(1)(2)(b). Defendant Abraham has satisfied these conditions and is therefore entitled to a stay of at least 90 days. However, the Court finds that Abraham is not entitled to a stay pending his completion of all military duties. The letter authored by Major Murphy represents that Abraham “is currently deployed to Iraq and will return about September 2007.” Abraham has not shown that his military duties would prevent him from appearing in this matter at the time of his return or that leave would be unavailable at such time. The Court will therefore stay the action against Abraham through September 31, 2007, but no further. If Abraham requires a continuation of the stay, he may apply for such relief pursuant to 50 U.S.C. app. § 522(d).

Accordingly, it is **ORDERED** that the defendant Abraham’s motion to stay proceedings [dkt # 82] is **GRANTED IN PART**.

It is further **ORDERED** that this case is **STAYED** as to defendant Justin Abraham only through **September 31, 2007**.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: June 28, 2007

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means or first class U.S. mail on June 28, 2007.

s/Felicia M. Moses  
FELICIA M. MOSES